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15 **RANDY CARVER**

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18 UNITED STATES DISTRICT COURT  
19 FOR THE NORTHERN DISTRICT OF CALIFORNIA  
20 OAKLAND DIVISION  
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22 UNITED STATES OF AMERICA *EX REL.*  
23 RANDY CARVER,

24 *Plaintiff,*

25 *v.*

26 FACTOR NUTRITION LABS, LLC *ET AL.*,

27 *Defendants.*  
28

Case No. 4:10-cv-02529-CW

**STIPULATION OF DISMISSAL**

Hon. Claudia Wilken

Pursuant to the parties' written settlement agreement, *qui tam* plaintiff Randy Carver ("Plaintiff") and defendant Factor Nutrition Labs, LLC ("Defendant") hereby stipulate as follows:

1. This is an action by Plaintiff claiming false patent marking pursuant to 35 U.S.C. § 292 for FOCUSfactor® ("FOCUSfactor").

2. Plaintiff and Defendant have agreed to settle their claims, including without limitation, claims for false patent marking for FOCUSfactor.

3. Plaintiff consents to dismissal with prejudice of all claims for false patent marking for FOCUSfactor. This dismissal, however, shall be without prejudice to the government should it decide itself to pursue any false marking claims against Defendant.

4. Plaintiff and Defendant shall each bear their own attorneys' fees and costs incurred in connection with this action.

5. This Court retains jurisdiction over the parties and the settlement agreement for purposes of resolving any disputes that may arise under it.

September 20, 2011

**PERKINS COIE LLP**

By: /s/ *Grant Kinsel*  
Grant Kinsel, Bar No. 172407

Attorneys for Defendant  
**FACTOR NUTRITION LABS, LLC**

September 20, 2011

**NEWPORT TRIAL GROUP**

By: /s/ *Scott Ferrell* (with permission)  
Scott Ferrell, Bar No. 202091

Attorneys for Plaintiff  
**RANDY CARVER**

**PROOF OF SERVICE**

I, Pamela Villeral, declare:

I am a citizen of the United States and employed in Los Angeles County, California. I am over the age of eighteen years and not a party to the within-entitled action. My business address is 1888 Century Park E., Suite 1700, Los Angeles, California 90067-1721. On September 20, 2011, I served a copy of the within document(s):

**STIPULATION OF DISMISSAL AND PROPOSED ORDER**

- ☒ by electronic service in accordance with the CM/ECF System for filing and transmittal of Notice of Electronic Filing to the below listed CM/ECF registrants:

Roger E. Borg  
rborg@calljensen.com

Scott J. Ferrell  
sferrell@trialnewport.com, lberger@trialnewport.com

- ☒ by placing the documents listed above in a sealed envelope with postage thereon fully prepaid, in the United States mail at Los Angeles, California addressed as set forth below:

David W. Reid  
Newport Trial Group  
610 Newport Center Drive, Suite 700  
Newport Beach, CA 92660

I am readily familiar with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with the U.S. Postal Service on that same day with postage thereon fully prepaid in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

1 I declare that I am employed in the office of a member of the bar of this  
2 court at whose direction the service was made.

3 I declare under penalty of perjury under the laws of the State of California  
4 that the above is true and correct.

5 Executed on September 20, 2011, at Los Angeles, California.  
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8 By: /s/ *Pamela Villeral*  
9 Pamela Villeral  
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8 UNITED STATES DISTRICT COURT  
9 FOR THE NORTHERN DISTRICT OF CALIFORNIA  
10 OAKLAND DIVISION

11 UNITED STATES OF AMERICA *EX REL.*  
12 RANDY CARVER,

13 *Plaintiff,*

14 *v.*

15 FACTOR NUTRITION LABS, LLC *ET AL.*,

16 *Defendants.*

Case No. 4:10-cv-02529-CW

**[PROPOSED] ORDER OF DISMISSAL**

Hon. Claudia Wilken

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18 In light of the settlement agreement and stipulation of dismissal between *qui*  
19 *tam* plaintiff Randy Carver (“Plaintiff”) and defendant Factor Nutrition Labs, LLC  
20 (“Defendant”), the Court hereby ORDERS as follows:

- 21 1. Plaintiff’s false patent marking claims for FOCUSfactor®  
22 (“FOCUSfactor”) are hereby dismissed with prejudice.  
23 2. Plaintiff and Defendant shall each bear their own attorneys’ fees and  
24 costs incurred in connection with this action.  
25 3. This Court retains jurisdiction over the parties and the settlement  
26 agreement for purposes of resolving any disputes that may arise under it.

27 Dated: 9/21/2011

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HON. CLAUDIA WILKEN  
U.S. DISTRICT JUDGE